IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 26898 of 2007(B)

PETITIONER:

KOYILANDY TALUK KALLU CHETHU VYAVASAYA THOZHILALI SAHAKARANA SANGHOM LIMITED NO.D2728, KOYILANDY P.O., KOZHIKODE DISTRICT, BY ITS SECRETARY T.K.JOSHI.

BY ADV. SRI.P.K.SURESH KUMAR
SMT.S.SUJA

RESPONDENTS:
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1. THE CIRCLE INSPECTOR OF POLICE, PERAMBRA.

2. THE SUB INSPECTOR OF POLICE, KOORACHUNDU, KOZHIKODE DISTRICT.

3. REJEENA JACOB, W/O.JACOB, OZHUKAYIL HOUSE, KARIYATHUMPARA, KOORACHUNDU, KOZHIKODE DISTRICT.

4. MAMACHAN, S/O.MATHEW, KONIYARATH HOUSE, KARIYATHUMPARA, KOORACHUNDU, KOZHIKODE DISTRICT.

5. AELIKUTTY, W/O.ANTONY, KIZHUKKARAKKATT HOUSE, KARIYATHUMPARA, KOORACHUNDU, KOZHIKODE DISTRICT.

BY ADV. SMT.LEKHA SURESH E3 TO R5
GOVERNMENT PLEADER SRI. P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 26898/2007 B

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. D3/5398/06 DT. 4/09/07 BY KOZHIKODE DIVISION AST. EXCISE COMMISSIONER.

EXT.P2. COPY OF THE LICENCE 173/2007-08 DT. 4/09/07 IN FAVOUR OF PETITIONER'S SHOP NO. 54/07-08.

EXT.P3. COPY OF THE TWO PHOTOGRAPHS SHOWING ILLEGAL ACT OF R3 TO R5 AND THEIR MEN.

EXT.P4. COPY OF THE COMPLAINT DT. 6/09/07 BY THE PETITIONER BEFORE THE R1.

EXT.P5. COPY OF THE COMPLAINT DT. 6/09/07 BY THE PETITIONER BEFORE THE R2.

RESPONDENT'S EXHIBITS

EXT.R3A. COPY OF THE COMMUNICATION DT. 10/09/07 TO ONE OF THE RESIDENTS OF THAT LOCALITY BY THE SECRETARY OF THE KOORACHUNDU GRAMA PANCHAYATH.

True copy

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K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) NO. 26898 OF 2007-B

Dated 17th September, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner is a Co-operative Society. It is the licensee of toddy shop No.54-2007-08 located at Kariyathumpara in Koorachundu Village of Koyilandy Taluk. Ext.P1 is the order of the Assistant Excise Commissioner dated 4.9.2007, shifting the said shop to the present premises. Ext.P2 is the licence issued for conducting the shop in building No.K.P. V/393A of Koorachundu Panchayat. The respondents 3 to 5 and others are obstructing the functioning of the shop by sitting at the entrance of it by turn. Therefore, the petitioner Society is not able to run the shop. So, it has moved the police by filing Ext.P5 representation, seeking police protection. When no help was extended by the police, this writ petition was filed, seeking the following reliefs:

> "(a) issue a writ of mandamus or other appropriate writ, order or direction commanding the 1st and 2nd respondents to render adequate police protection to the petitioner for the peaceful

> conduct of trade in toddy shop No.54 covered by Ext.P2 licence without any kind of interference or obstruction from any person including respondents 3 to 5 or their supporters or such other persons."

2. The learned Government Pleader, upon instructions, submitted that against the obstructors two crimes have been registered under Sections 341, 448 and 427 of the I.P.C.

3. A counter affidavit has been filed on behalf of respondents 3 to 5, stating that the shop is housed in a building located in a very thickly populated area. There is an Anganwadi within 200 metres of the shop. The children going to the St.Joseph's School, Kariyathumpara, which is at a distance of 1 k.m away, have to go through the road running by the side of the said shop. The drunkards and other goondas present in the shop are causing nuisance in the locality. The people around the shop are very poor and living below the poverty line. The functioning of the ship will disturb the tranquility of the area. They say, they have already moved the statutory authorities against the sanctioning of the shop in the present premises.

4. As long as Ext.P2 licence remains in force, the petitioner is entitled to run the shop. The respondents 3 5o 5 and others may pursue their representations before the statutory authorities against Exts.P1 and P2. As long as Ext.P2 licence remains in force, the police shall ensure that the

obstruction to the ingress and egress of the workmen and customers of the petitioner's shop is removed. The party respondents or their supporters can hold demonstrations, stage satyagrahas and register their protest in a peaceful manner. The police shall not interfere with the same. If only physical obstruction is offered to the customers and workmen of the petitioner's shop, the police shall take action. If there is any obstruction, the petitioner shall inform the police and in that event the police will take appropriate action to remove the same. This protection order will continue as long as Ext.P2 remains in force.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/